

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 4

(T.D. 84-57)

Customs Regulations Amendment Removing China From the List of Countries Entitled to Special Tonnage Tax Exemption

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by removing the People's Republic of China (China) from the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State informed Customs that, due to the expiration of the U.S.-China Agreement on Maritime Transport, there is no longer satisfactory evidence that no discriminatory duties of tonnage or imposts are being imposed in ports of China upon vessels belonging to citizens of the U.S. or on their cargoes. Therefore, privileges regarding exemption from the payment of discriminatory duties upon vessels registered in China which enter U.S. ports cannot be granted by the U.S. at this time.

EFFECTIVE DATE: December 16, 1983.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that

foreign nation on U.S. vessels or their cargoes (46 U.S.C. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

By letter dated December 19, 1983, the Department of State informed the Customs Service that the U.S.-China Agreement on Maritime Transport, which was signed and took effect on September 17, 1980, expired on December 16, 1983. When this Agreement was signed, there was satisfactory evidence that no discriminatory duties of tonnage or imposts were being imposed or levied in ports of China upon vessels wholly belonging to citizens of the U.S., or upon the produce, manufactures, or merchandise imported into China on vessels from the U.S. Accordingly, T.D. 82-16, published in the Federal Register on January 14, 1982 (47 FR 2084), amended section 4.22, Customs Regulations, by granting reciprocal privileges to vessels of China as of September 17, 1980. However, since no successor Agreement has yet been concluded and because the only assurances the Government of China has provided the U.S. Government concerning tonnage duties were contained in the Maritime Agreement, which expired December 16, the Department of State believes that the U.S. is no longer in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts on U.S. vessels. Therefore, the Department of State recommended to Customs that China be removed, effective December 16, 1983, from the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money. On December 30, 1983, the Director, Carriers, Drawback and Bonds Division of the Customs Service determined that effective December 16, 1983, China should be deleted from the list in section 4.22.

By virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), the President has delegated the authority to grant this exemption to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951, as amended by E.O. No. 10882, July 18, 1960 (3 CFR, 1959-1963 Comp., Ch II). By Treasury Department Order 165-25 the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to section 4.22 and other sections of the Customs Regulations relating to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated authority to grant this exemption and to amend these sections to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then re-delegated it to the Director, Regulations Control and Disclosure Law Division.

FINDING

On the basis of the information received from the Secretary of State, as described above, it has been determined that the United States is no longer in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts imposed on U.S. vessels in ports of China. Therefore, China is removed from the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money as of December 16, 1983.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, cargo vessels, maritime carriers, vessels.

REGULATIONS AMENDMENT

To reflect this change, section 4.22, Customs Regulations (19 CFR 4.22), is amended by deleting "China." from the list of nations entitled to exemptions from special tonnage taxes and deleting "See also Taiwan." below "Zaire." on the same list.

(R.S. 251, as amended, 4219, as amended, 4228, as amended, 4255, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759, (19 U.S.C. 66, 1624, 46 U.S.C. 51, 21, 128, 141)).

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of section 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

EXECUTIVE ORDER 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 1, 1984.

B. JAMES FRITZ,
*Director, Regulations Control
and Disclosure Law Division.*

[Published in the Federal Register, March 8, 1984 (49 FR 8599)]

(T.D. 84-58)

Bonds

Approval to use authorized facsimile signatures and seals

The use of facsimile signatures and seals by the following corporate surety has been approved effective February 29, 1984. The corporate surety has provided the Customs Service with a copy of each signature that is to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Allied Fidelity Insurance Company, Indianapolis, Indiana.

Authorized facsimile signatures on file for: Fred D. Hoffman, Brad Hoffman, Irene Hoffman.

BON-1-02
216599

Dated: February 29, 1984.

EDWARD B. GABLE, Jr.,
*Director, Carriers, Drawback
and Bonds Division.*

19 CFR Part 177

(T.D. 84-59)

Tariff Classification of Footwear Known as "Rubber Duckies"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of Practice.

SUMMARY: This document changes Customs practice with respect to the tariff classification of certain imported footwear known as "Rubber Duckies". This change, which is based upon a finding that the tongue or flap of the subject footwear should be included in the computation of the exterior surface of the upper, will result in the

imposition of a lower rate of duty for future importations of the footwear.

EFFECTIVE DATE: April 11, 1984.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document pertains to the tariff classification of certain footwear known as "Rubber Duckies." More specifically, the merchandise involved is a ladies "Rubber Ducky" with a rubber/plastic molded bottom and a trimmed leather top line extending downward one inch to one and five-eighths inches and stitched to a molded bottom.

There is an established and uniform practice of classifying, for tariff purposes, the subject footwear under the provision for other footwear which is over 50 percent by weight of rubber or plastics and is designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals, or cold or inclement weather, in item 700.57, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a Column 1 rate of duty of 37.5 percent ad valorem. This practice is based upon: (1) Uniform liquidations at various ports of entry; and (2) Customs Ruling 800025, dated February 13, 1981, and published in the Customs Bulletin as C.S.D. 81-183 (15 C.B. 1095). In a notice published in the Federal Register on June 23, 1983 (48 FR 28673), Customs proposed to change its practice such that the subject footwear would be classified under the provision for footwear of leather for other persons valued over \$2.50 per pair, in item 700.45, TSUS, at a Column 1 rate of duty of 10 percent ad valorem.

The proposed change was based upon a finding that the tongue or flap of the footwear at issue, which extends upward from the top line of the shoe, should be included in the computation of the exterior surface of the upper, thereby causing the exterior surface to be over 50 percent leather and excluding the footwear from classification under item 700.57, TSUS.

As explained in the notice, Customs proposed to change this practice, and find that the tongue or flap of the subject footwear should be included in the computation of the exterior surface of the upper, because the leather tongue or flap is not covered by any portion of the upper when the shoe is tied, and because the entire surface of the tongue or flap is visible and tactile.

DISCUSSION OF COMMENTS

Only two comments were received in response to the notice. Both commenters took the position that the tongue or flap of the "Rubber Duckies" should not be included in the computation of the exterior surface area of the uppers. Therefore the present tariff classification should be retained.

In support of their position, the commenters cited T.D. 54659 which contains legislative history pertaining to paragraph 1530(e), Tariff Act of 1930. Under this paragraph, rubber-soled footwear with uppers of fabric and certain other materials was originally dutiable at the rate of 35 percent ad valorem. The legislative history referred to states that conventional tongues of this type of footwear are not included in the "greater area of the outer surface." It is also asserted that there is nothing in this legislative history which indicates any intention to exclude only certain types of tongues, such as those on the plane lower than a portion of the upper, from the computation of exterior surface area.

It is Customs position that the above-cited legislative history is applicable only to paragraph 1530(e), Tariff Act of 1930. Since the language of the Tariff Act of 1930 was not carried forward to the Tariff Schedules of the United States, Customs does not believe that this legislative history is applicable.

It has consistently been Customs position that the exterior surface area of the upper is whatever is visible and tactile on the surface excepting such things as buttons, strips and other loosely attached appurtenances. In those cases where the tongue was held not to be part of the exterior surface area of the upper, it was on a plane lower than a portion of the upper and was partially or wholly covered by laces and eyelet facings or stays.

The leather flaps or tongues of the "Rubber Duckies" in issue are not covered by any portion of the upper when tied. Their entire surfaces are visible and tactile. For this reason it is Customs position that the current established and uniform practice should be changed so that in this particular type of construction, the flap or tongue should be measured as part of the exterior surface area of the upper.

CHANGE OF PRACTICE

After careful analysis of the comments and further review of the matter, the "Rubber Duckies" involved will be classifiable under item 700.45, TSUS, at a Column 1 rate of duty of 10 percent ad valorem, provided leather does in fact occupy over 50 percent of the exterior surface area of the upper. If leather does not occupy over 50 percent of the exterior surface area of the upper, this change of practice would not apply and the "Rubber Duckies" would fall under another provision of the TSUS which would more specifically describe the imported footwear.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Date: January 11, 1984.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, March 12, 1984 (49 FR 9167)]

19 CFR Part 171

(T.D. 84-60)

Filing of Petition for Remission or Mitigation of Fine, Penalty or Forfeiture

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim Regulations.

SUMMARY: This document amends the Customs Regulations to provide for a 30-day time limit for submission of petitions for relief from interested parties in matters involving the seizure/forfeiture of conveyances in certain instances. Current regulations provide a 60-day period for submission of petitions, irrespective of the character of the alleged violation.

The amendment is necessary because of the dramatic increase in seizures of conveyances used to facilitate the illegal importation of drugs and firearms. Immediate action is necessary to expand the effectiveness of drug smuggling enforcement efforts and provide for the expeditious disposition of seized conveyances.

EFFECTIVE DATE: March 12, 1984.

COMMENTS: The amendment is being published as an interim regulation, effective March 12, 1984. However, written comments received on or before May 11, 1984 will be considered in determining whether any changes to the regulations are required before a permanent rule is published.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Office of Regulations and Rulings, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the United States

market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated \$80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users and the major increases in the volume of illegal drug importations in the United States are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures. The Customs Service is playing an increasingly significant role in the Administration's war on drugs. In fact, Customs seizes more conveyances than any other Federal agency. The increased effectiveness of the enforcement efforts places a significant burden on the Customs Service in that the seized conveyances must be stored and maintained, often for extended periods of time.

In order to address this growing problem, it is necessary to take immediate action. Therefore, the Customs Regulations are being amended to provide an expedited petition process for cases involving certain conveyance seizures. Specifically, section 171.12, Customs Regulations (19 CFR 171.12), is being amended to provide that petitions for relief from those seizures of conveyances involved in the illegal transportation of any amount of heroin, 5 pounds or more of cocaine, 10 pounds or more of hashish, 250 pounds or more of other controlled substances, or firearms in a quantity clearly in excess of personal use needs, must be filed within 30 days from the date of mailing of the notice of fine, penalty or forfeiture.

COMMENTS

Before adopting the regulations as a final rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

Because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for immediate action to deal with the rapidly growing number of conveyances under seizure, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is being dispensed with.

E.O. 12291 AND REGULATORY FLEXIBILITY ACT

Inasmuch of Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601-612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule. If the comments or further Customs review indicate a significant economic impact, a regulatory flexibility analysis will be prepared and published with the final rule.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 171

Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

AMENDMENTS TO THE REGULATIONS

Part 171, Customs Regulations (19 CFR Part 171), is amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: February 21, 1984.

JOHN M. WALKER, JR.,

Assistant Secretary of the Treasury.

[Published in the Federal Register, March 12, 1984 (49 FR 9166)]

PART 171—FINES, PENALTIES, AND FORFEITURES

Section 171.12 is amended by (1) redesignating paragraph (c) as paragraph (d), and (2) adding a new paragraph (c) and revising paragraph (b) to read as follows:

§ 171.12 Filing of petition.

* * * * *

(b) *When filed.* Except as provided in paragraph (c) of this section, or unless additional time has been authorized as provided in section 162.32(a) of this chapter, petitions for relief shall be filed within 60 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

(c) *Petitions for remission of forfeitures of certain conveyances.* Petitions for remission of forfeiture of a conveyance seized in connection with the illegal importation of any amount of heroin, 5 pounds or more of cocaine, 10 pounds or more of hashish, 250 pounds or more of other controlled substances, or firearms in a quantity clearly in excess of personal use needs shall be filed within 30 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)).

U.S. Customs Service

General Notice

19 CFR Part 10

Caribbean Basin Initiative

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to interim Customs Regulations relating to the Caribbean Basin Initiative which were published as T.D. 84-14 in the Federal Register on January 5, 1984 (49 FR 852). Comments were to have been received on or before March 5, 1984.

Customs has been requested to extend the comment period because of the complicated issues raised and the need to solicit the views of the governments affected by the interim regulations. Customs believes the request has merit. Accordingly, the period of time for the submission of written comments is extended to May 4, 1984.

DATE: Comments must be received on or before May 4, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: William L. Marchi, Duty Assessment Division (202-566-2957); Legal Aspects: Francis W. Foote, Classification and Value Division (202-566-2938); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Dated: March 2, 1984.

JOHN P. SIMPSON,
*Director, Office of
Regulations and Rulings.*

[Published in the Federal Register, March 8, 1984 (49 FR 8600)]

U.S. Court of Appeals for the Federal Circuit

(Appeal No. 83-956)

AMERSHAM CORPORATION, APPELLANT *v.* UNITED STATES, APPELLEE

(Decided: March 2, 1984)

Lynn S. Baker, of Chicago, Illinois, argued for appellant. With her on the brief was *Robert E. Burke*.

Joseph I. Liebman, of New York, New York, argued for appellee. With him on the brief were *J. Paul McGrath*, Assistant Attorney General, and *David M. Cohen*, Director.

Appealed from United States Court of International Trade.

Chief Judge Re.

Before *FRIEDMAN, SMITH, and NIES*, *Circuit Judges*.

SMITH, Circuit Judge.

In this customs classification case appellant, Amersham Corporation (Amersham), appeals from a judgment of the United States Court of International Trade rejecting the United States Customs Service's initial classification of certain radioactive foil disks used in smoke detectors, rejecting Amersham's preferred classification of the product, but accepting Amersham's alternative classification. We affirm.

ISSUE

The sole issue before this court is whether certain imported radioactive foil disks (disks) are properly classified, as Amersham contends, under Tariff Schedules of the United States (TSUS)¹ 494.50, usefully radioactive chemical compounds,² having a zero duty, or, as the United States (Government) contends, and Amersham alternatively contended below, under 685.70, fire alarms and parts thereof, having a 4 percent ad valorem duty.

¹ See 19 U.S.C. § 1202 (Supp. V 1981).

² See Chief Judge Re's opinion below for complete description of relevant TSUS numbers. *Amersham Corp. v. United States*, 564 F. Supp. 813, 814-15 (CIT 1983).

BACKGROUND

A summary description of the facts material to this appeal is:³ Amersham imports a product described as "americium 241 alpha foil disk," consisting of americium oxide measuring one microcurie encapsulated in a foil capsule of a gold-palladium face with a silver backing (foil). Americium oxide is a compound composed of the elements americium and oxygen; americium 241 is an isotope of the element americium. Americium oxide is highly radioactive and must be encapsulated to allow safe emission of the radiation. The disks as imported are primarily designed and almost exclusively used in ionization-type smoke detectors.

The Customs Service initially classified the disks under 709.66 at 6 percent duty; Amersham contested and the trial court rejected this classification, accepting Amersham's fall-back classification under 685.70 at 4 percent but rejecting Amersham's first-choice classification under the duty-free 494.50. Amersham appeals the trial court's judgment, seeking reversal regarding classification under 685.70 and classification instead under 494.50; the Government requests this court to affirm the trial court's classification of the disks under 685.70. Neither side appeals the trial court's rejection of Customs' initial classification of the disks under 709.66.

OPINION

In our independent review of the contested issue of law (classification) herein, we keep in mind that Amersham bears the burden of proof to establish that its claim is correct. 28 U.S.C. § 2639(a) (Supp. V 1981).

Amersham's contention that the disks fall under duty free 494.50, usefully radioactive chemical compounds, may be viewed under two theories. The first, which the trial court analyzed in detail, focuses on whether the disks are "compounds" which are usefully radioactive. The second, whether the disks may be viewed as compounds in a usual container (the foil), was only tangentially discussed below.⁴ We discuss these in turn, focusing upon the latter theory.

Expert testimony has established and the parties agree that americium oxide is a "compound" as defined in schedule 4, headnote 2(a) of the tariff schedules,⁵ but that, since the gold-palladium and silver foil does not bond with the americium oxide, the alpha foil disk itself is not a "compound" as so defined.⁶ Chief Judge Re found this fact conclusive in his rejection of Amersham's primary claim, despite Amersham's argument that, although the disk tech-

³ A complete description of the facts is set forth in *Amersham*, 564 F. Supp. at 813.

⁴ The Government argues that Amersham's "usual container" claim is a new one not raised before the trial court and hence not to be considered by this court. We disagree. While the issue was not so refined and honed as it is here on appeal, it was at least mentioned below (e.g., plaintiff's reply brief at 12-13) and was addressed implicitly in Chief Judge Re's opinion. *Amersham*, 564 F. Supp. at 817.

⁵ See *id.* at 815 for pertinent text of headnote.

⁶ *Id.* at 816.

nically may not be a compound, it must be so constructed in order for the true compound sandwiched inside, the americium oxide, to be usefully radioactive. We affirm Chief Judge Re's discussion and holding on this theory.⁷

Alternatively, Amersham urges before this court a second manner of viewing the alpha foil disks: as tiny parcels of the compound americium oxide, by itself harmfully radioactive but which when packaged in the usual or ordinary containers for such a compound—i.e., the foil—is usefully radioactive. This theory involves two subissues: (1) whether the foil is indeed a "usual or ordinary" container;⁸ and, (2) whether, if it is, the compound inside the container is "usefully radioactive." Because we hold against Amersham on the first subissue, we do not reach the second.

In urging that the foil is a usual container, Amersham stresses that the foil is not designed for, or capable of, reuse; it serves as a standard device for transporting the radioactive americium oxide; it is sold with the americium oxide at retail; and it remains with the compound throughout its commercial use in the smoke detector, enabling the compound to perform its function of emitting radiation in a useful manner. While Amersham cites a number of container cases and a Customs ruling in support of its position,⁹ we find persuasive in this highly fact-specific area the case of *Bruce Duncan Co. v. United States*, 63 Cust. Ct. 412, C.D. 3927 (1969). In *Bruce Duncan* the importer contended that metal cartridges filled with butane were usual containers for the duty-free butane and were not parts of cigarette lighters. As with the special foil here, the metal cartridges were not designed for or capable of reuse; they served as the standard device for transporting the flammable butane; they were sold with the butane and remained with it throughout its commercial use in the cigarette lighter. Nevertheless the Customs Court held:

While it seems clear from the record that the cartridges are containers for butane, they are not the "usual" containers which General Headnote 6(b) (i) and (ii) envisions. It is apparent that the primary function of the cartridge is as a part of a cigarette lighter. * * *

Bruce Duncan, 63 Cust. Ct. at 415.¹⁰

⁷ *Id.* at 814-21.

⁸ As defined in TSUS General Headnote 6(b)(i):

"(i) The usual or ordinary types of shipping or transportation containers or holders, if not designed for, or capable of, reuse, and containers of usual types ordinarily sold at retail with their contents, are not subject to treatment as imported articles. Their cost, however, is * * * a part of the value of their contents and if their contents are subject to an ad valorem rate of duty such containers or holders are, in effect, dutiable at the same rate as their contents * * *."

⁹ *E.g.*, *United States v. Hohner*, 4 Ct. Cust. App. 122, T.D. 33,393 (1913); *R. J. Saunders & Co. v. United States*, 69 Cust. Ct. 151, C.D. 4387 (1972); *Fontana Hollywood Corp. v. United States*, 64 Cust. Ct. 204, C.D. 3981 (1970); *Spesco Corp. v. United States*, 62 Cust. Ct. 297, C.D. 3749 (1969). This court has considered the container problem as it regards reuse in *Holly Stores, Inc. v. United States*, 697 F.2d 1387 (Fed. Cir. 1982). Amersham also cites a 1969 Customs ruling, Treas. Dec. 69-77(17), ORR Ruling 200-69, concerning encapsulated radium-beryllium neutron sources having many uses, whereas the subject disks are manufactured precisely for smoke detector use. *Amersham*, 564 F. Supp. at 817.

¹⁰ See also *Morris Friedman & Co. v. United States*, 56 Cust. Ct. 21, C.D. 2607 (1965).

The same is true here. Just as the metal cartridges were designed precisely to fit into the cigarette lighters, the alpha foil disks "are primarily designed and almost exclusively used by its [Amersham's] customers, as parts of smoke detectors."¹¹ We therefore hold that Amersham has failed to bear its burden of proving the correctness of classifying the alpha foil disks under 494.50, using a "usual container" theory, and reaffirm the trial court's holding that the disks must be considered as parts of fire alarms under 685.70. In this context we do not reach, though are mindful of, Amersham's contentions that such a holding is contrary to congressional intent in enacting 494.50 and creates an anomaly in that it practically reads that TSUS item and the concept of "usefully radioactive" out of existence. The trial court has thoroughly analyzed these arguments below.¹²

CONCLUSION

Having considered the question of law (classification) here presented, we hold that Amersham has failed to sustain its burden of proving the correctness of its primary claim and we affirm the judgment below.¹³

AFFIRMED

¹¹ *Amersham*, 564 F. Supp. at 821. We do not repeat here the findings of fact which led Chief Judge Re to this conclusion. *Id.* at 820-22.

¹² *Id.* at 814-21.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson

Nils A. Boe
Gregory W. Carman
Jane A. Restani

Senior Judges

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 84-11)

ROQUETTE FRERES AND ROQUETTE CORPORATION, PLAINTIFFS v.
UNITED STATES, DEFENDANT, and PFIZER, INC., INTERVENOR

Court No. 82-5-00636

Before BOE, Judge.

Memorandum Opinion and Order Denying Plaintiffs' Motion To Dismiss Intervenor's Counterclaim

[Motion to dismiss denied.]

(Dated February 17, 1984)

Wald, Harkrader & Ross (Joel E. Hoffman, Mark R. Joelson, Marilyn E. Kerst and Kenneth H. Hall, on the briefs) for the plaintiffs.

Richard K. Willard, Acting Assistant Attorney General (David M. Cohen, Director, Commercial Litigation Branch and A. David Lafer, on the briefs) for the defendant.

Barnes, Richardson & Colburn (E. Thomas Honey, Michael A. Johnson, and James H. Lundquist, on the briefs) for the intervenor.

BOE, Judge: Plaintiffs commenced the above action in this court by filing a summons and complaint challenging the final affirmative determinations of the International Trade Administration ("ITA") and International Trade Commission ("ITC"). *Sorbitol From France; Final Determination of Sales at Less Than Fair Value*, 47 Fed. Reg. 6459 (1982); *Sorbitol From France; Inv. No. 731-TA-44 (Final)*, 47 Fed. Reg. 14981 (1982). Pursuant to an order of remand entered by this court in *Roquette Freres v. United States*, 6 CIT —, Slip Op. 83-71 (July 18, 1983), the ITC made its remand determination, altering in part its prior determination.¹ The plaintiffs, deeming a new action necessary to challenge the remand determination of the ITC, filed a new summons and complaint. In a memorandum opinion and order granting the motion of the defendant to dismiss the second action commenced by the plaintiffs, *Roquette Freres v. United States*, 6 CIT —, Slip Op. 83-137 (December 21, 1983), the court "gratuitously" permitted the filing of supplemental pleadings and/or responses by the parties.

In its response to the supplemental complaint filed by the plaintiffs, the intervenor included a counterclaim.

¹ The ITC altered its original final affirmative determination by finding in its determination on remand that:

1. "As of the date of the commission's [original final] determination" a domestic industry had been materially injured by reason of imports of crystalline sorbitol from France.

2. A domestic industry was not materially injured or threatened with material injury by reason of imports of liquid sorbitol from France. *Sorbitol From France; Inv. No. 731-TA-44 (Final—Court Remand)*, 48 Fed. Reg. 49560 (October 26, 1983).

The plaintiffs in the instant proceeding seek to dismiss the counterclaim of the intervenor for the reasons that:

1. It is not brought within the time limitations of 19 U.S.C. § 1516(a)(2)(A)(i)&(B)(ii) for a challenge to a negative determination of the ITC, and

2. It fails to state a claim upon which relief can be granted.

This court acquired jurisdiction with respect to the review of the administrative determination of the ITC by the filing of the summons and complaint on May 7 and June 4, 1982 respectively. The jurisdiction thus acquired by this court is continuing, notwithstanding the fact that the court remanded the action to the ITC for further determination. The return of the administrative record to this court after remand does not require the filing of a new summons and complaint in order to confer jurisdiction upon the court. *See* 6 CIT —, Slip Op. 83-137 (1983).

Plaintiffs ignore the explicit wording of § 1516a(a)(2)(A)&(B) which relates solely to the time for commencement of an *action* in this court challenging an administrative determination. Once the court has acquired jurisdiction, the statute does not attempt to direct the manner of presentation of issues and arguments as to an administrative determination, affirmed, altered, or revised on remand.

The intervenor, a party in interest, is a proper party litigant in this action. The continuing jurisdiction of this court over the determination of the ITC, as altered on remand, permits the intervenor to challenge the negative portion of the ITC determination without further pleading.

It is unfortunate that in § 1516a review proceedings the intention and, indeed, the mandate of Congress for an expeditious judicial determination on the administrative record becomes subverted by reason of the questionable use of the rules of pleading and practice, and motions relating thereto, designed primarily for the *trial* of actions in this court.

Justifiable confusion on the part of litigants may well stem from the statutory provision requiring a party, desiring to challenge an administrative determination, to commence an "action" in this court by the filing of a summons and complaint. 19 U.S.C. 1516a(a)(2) (A) & (B).

However, the purpose and intent of court rule 56.1 will be held for naught if full import is not given to its provisions. After jurisdiction has been acquired by the timely filing of a summons and complaint and issue is joined, the court, on its own initiative or on motion of any party, may direct that the matter be submitted for determination by a motion for review. Rule 56.1 of the Court of International Trade Rules. Subsection (c) of rule 56.1 specifically prescribes the contents of motion papers and accompanying briefs submitted to this court either contesting or supporting the agency determination. During the course of a review proceeding, the opportu-

nity for a party to challenge an administrative determination, altered or reversed on remand, necessarily must be recognized and allowed by this court. Rule 56.1 contemplates that in a submission of a determination for review, the court will conduct its review without the need of additional or supplemental pleadings. Challenges or responses, requiring a changed position on the part of a party, can be set forth in supplemental briefs and memoranda as provided by rule 56.1(d).

The present mélange confirms the result which well may be envisioned by the application of the general rules of pleading, intended for the trial of an action, to a proceeding which is exclusively a review on the administrative record. The designation "counter-claim" interposed by the intervenor as a part of its response to the supplemental complaint filed by the plaintiff is illustrative of the "messaging" which results from the attempt to utilize the denominative titles of formal pleadings, authorized by the rules of court for initiating an action, in an administrative review proceeding.

The intervenor, however, has clearly stated in the preliminary statement contained in its response to plaintiffs' supplemental complaint its sole purpose and objective in filing a "counterclaim."

Intervenor was not a party to Court No. 83-11-01683, and believes that the issues which it wishes to raise with regard to the remand determination of the United States International Trade Commission in this case, are best handled and stated in the supplementary brief filed in this action with the Court on January 3, 1984, where those issues have been stated according to Rule 56.1(c) of the rules of this Court. Intervenor files this responsive pleading to plaintiffs' election to file a supplemental complaint in order to complete this Court's records in one document.

As the intervenor further acknowledges, its counterclaim constitutes nothing more than a renewal of its prayer for relief contained in its rule 56.1 motion for judgment on the administrative record, filed on January 3, 1984, upon remand after redetermination by the ITC. The designation of the term "counterclaim" cannot serve in itself as a ground for dismissal of this response to plaintiffs' supplemental pleading.

Accordingly, it is

ORDERED that plaintiffs' motion to dismiss be and is hereby denied.

(Slip Op. 84-12)

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS, and COMPANHIA SIDERURGICA PAULISTA, ET AL., DEFENDANTS-INTERVENORS

Consolidated Court No. 82-10-01361

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS, and COMPANHIA SIDERURGICA PAULISTA, ET AL., DEFENDANTS-INTERVENORS

Court No. 82-10-01361S

UNITED STATES STEEL CORPORATION, PLAINTIFF *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS, and POHANG IRON & STEEL CO., LTD., ET AL., DEFENDANTS-INTERVENORS

Consolidated Court No. 83-01-00134

UNITED STATES STEEL CORPORATION, PLAINTIFF *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Court No. 83-01-00134S

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Court No. 83-01-00152S

Before WATSON, Judge.

MOTION FOR VOLUNTARY DISMISSAL

[Granted.]

(Dated February 24, 1984)

Law Department of United States Steel Corp. (D. B. King of counsel) for plaintiff United States Steel Corp.

Cravath, Swaine & Moore (Joseph N. Sahid, of counsel) for plaintiffs Republic Steel Corp., Inland Steel Company, Jones & Laughlin Steel, Inc., National Steel Corp. and Cyclops Corp.

Richard K. Willard, Acting Assistant Attorney General, David M. Cohen, Director, Commercial Litigation Branch (*Francis J. Sailer*, Attorney) for the federal defendants.

Wald, Harkrader & Ross (Christopher Dunn, of counsel) for defendants-intervenors Companhia Siderurgica Paulista and Usinas Siderurgicas de Minas Gerais.

Busby, Rehm and Leonard, P.C. (John B. Rehm, of counsel) for defendant-intervenor Highveld Steel and Vanadium Corp. Ltd.

Daniels, Houlihan and Palmetter, P.C. (N. David Palmetter and Donald B. Cameron, Jr.) for defendants-intervenors Pohang Iron & Steel Co., Ltd., and Union Steel Mfg. Co., Ltd.

WATSON, Judge: Upon the basis of plaintiffs' Motion for Voluntary Dismissal under Rule 41(a)(2) and plaintiffs' memorandum in support thereof, together with defendants' consent thereto and supporting memorandum, as well as the lack of objection from defendants-intervenors, it is hereby

ORDERED that the above-captioned civil actions are dismissed and that the decisions, orders and judgments that have been rendered therein are vacated as moot.

This dismissal is without prejudice to plaintiffs' right to litigate any or all of the issues covered by the complaints that have been filed in the dismissed cases. The parties will bear their own costs.

(Slip Op. 84-13)

DIVERSIFIED PRODUCTS CORPORATION, PLAINTIFF v. UNITED STATES, DEFENDANT

Court No. 82-7-01065

OPINION AND ORDER

Lamb & Lerch; Richard J. Kaplan, of counsel (*Sidney H. Kuflik* on the brief) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch; *Robert F. Seeley*, International Trade Administration, U.S. Department of Commerce, of counsel (*Francis J. Sailer* on the briefs) for defendant.

Eugene L. Stewart, Terence P. Stewart and Jeffrey S. Beckington for intervenor Stewart-Warner Corporation.

(Dated February 29, 1984)

MALETZ, Senior Judge: In an opinion and order filed in this action on September 27, 1983, the court affirmed the final results of an administrative review conducted by the Department of Commerce, International Trade Administration (ITA), pursuant to section 751 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, 19 U.S.C. § 1675 (1982). *Diversified Products Corp. v. United States*, 6 CIT —, 572 F. Supp. 883. The court also granted the government's cross-motion to remand the case to the ITA for a redetermination of the amount of estimated antidumping duties to be deposited on future entries of the merchandise—bicycle speedometers from Japan. *Id.*, 572 F. Supp. at 890. The revised results of that remand are the focus of this present proceeding.

The dumping margin was initially determined by the ITA to be 25.98 percent *ad valorem*, representing the highest margin found to exist for any responding firm during the ITA's section 751 review. Admitting error in its methodology, the ITA indicated it would recompute the dumping margin on remand, employing a weighted average margin for all responding firms. As recomputed the dumping margin would be lowered to 20.04 percent *ad valorem*, thereaf-

ter serving as the benchmark for deposits of estimated antidumping duties on all future entries.

While plaintiff Diversified Products Corp. has no objection to the new margin, it does object to the Customs Service's retention of the 5.94 percent difference in its deposits of estimated duties. For that reason Diversified seeks an immediate refund of this difference. The government concedes that Diversified will be entitled to a refund should the amount of actual antidumping duties assessed at the time of liquidation be lower than the amount deposited as estimated duties. However, the government insists, Diversified must wait until the entries for which estimated antidumping duties were deposited are liquidated. The court agrees with the government.

The rub for Diversified, of course, is that it is being required to wait for any refund until the next annual section 751 review. At that time, under existing administrative practice, all unliquidated entries of bicycle speedometers entered during the review period will be liquidated in accordance with the actual dumping margin found to exist for that period. If that figure exceeds the amount of estimated duties deposited for the period, Diversified will be assessed the difference. Conversely, if that figure is lower than the amount of estimated duties deposited with Customs, Diversified will receive a refund of the difference with interest. The court believes that this administrative practice comports with the statutory scheme under which the ITA and Customs currently operate.

First of all, section 737(b) of the Trade Agreements Act of 1979, 19 U.S.C. § 16736(b) (1982), provides:

If the amount of an estimated antidumping duty * * * is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption * * * shall be—

(1) collected, to the extent that the deposit under section 1673e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1673e(a)(3) of this title is higher than the duty determined under the order,

together with interest as provided by section 1677g of this title. From the plain language of this section the focal date for a refund (or collection of additional duties) is the date the "duty [is] determined under the [antidumping duty] order." By logical extension, since "a section 751 review represents the duty assessment phase of an antidumping duty investigation", *AL Tech Specialty Steel Corp. v. United States*, 6 CIT —, 575 F. Supp. 1277, 1283 (1983), the government takes the position that a refund of an estimated duty overpayment is likewise not due in the section 751 review context

until those duties are "determined".¹ *See Asahi Chemical Industry Co. v. United States*, 4 CIT 120, 548 F. Supp. 1261, 1265 (1982). This duty determination does not occur, insofar as entries made during a review period are concerned, until the next annual section 751 review. *See American Spring Wire Corp. v. United States*, 7 CIT —, Slip Op. 84-2, at 4-5 (Jan. 19, 1984). At that time actual duties are assessed and the entries for that period are liquidated in accordance therewith. *Id.* Refunds or additional collections are then made. The court feels that this administrative practice is consonant with the Trade Agreements Act of 1979, especially sections 737 and 751, 19 U.S.C. §§ 1673f and 1675.

Any lingering doubts as to the propriety of this administrative practice are resolved by section 520(a) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(a) (1982). That section, entitled "Refunds and Errors," authorizes the Secretary of the Treasury to refund duties "[w]henever it is ascertained on liquidation * * * of an entry that more money has been deposited * * * as duties than was required by law to be so deposited" (emphasis added). Here, since there was no clerical error, but rather error predicated on faulty methodology—that is, one erroneous as a matter of law—section 520(a) is applicable. Accordingly, reading the amended Tariff Act of 1930 as a whole, particularly sections 520(a), 737 and 751, *Richards v. United States*, 369 U.S. 1, 11 (1962); *In re Nantucket, Inc.*, 677 F.2d 95, 98 (CCPA 1982), it is clear that the act of liquidation—which cannot take place until actual antidumping duties have been determined and assessed—is the event which triggers the payment of any refund.

There is, in sum, no statutory authority for the ITA or Customs to grant the immediate refund sought by Diversified. *See Ceramica Regiomontana, S.A. v. United States*, 5 CIT 23, 557 F. Supp. 596, 602-03 (1983). Any harshness resulting from this process is ameliorated by the provision for interest on refunds under 19 U.S.C. § 1677g (1982). *See also Asahi Chemical Industry Co.*, 548 F. Supp. at 1264 & n.2 (agency's interpretation of a statute must be "sufficiently reasonable" to be accepted by a court). *But see Ambassador Division of the Florsheim Shoe Co. v. United States*, 6 CIT —, Slip Op. 83-125 (Dec. 2, 1983) (appeal pending) (administrative practice

¹ Section 751, 19 U.S.C. § 1675, provides in part:

(a) *Periodic review of amount of duty.*

(1) *In general.*

At least once during each 12-month period beginning on the anniversary of the date of publication of * * * an antidumping duty order * * * the administering authority * * * shall—

(B) *review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty.*

and shall publish the results of such review, together with notice of any duty to be assessed [or] estimated duty to be deposited * * *.

(2) *Determination of antidumping duties.*

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

of suspending liquidation of entries pending next annual section 751 review invalid in connection with nonsignatory country).

For the foregoing reasons, the government's motion for an order affirming the revised remand results is granted. Judgment shall enter accordingly.



Decisions of the Court of Interna

Abstra

Abstracted Prot

The following abstracts of decisions of the United States Court of International Trade are published for the information and guidance of officers and employees of the United States Customs Service. The decisions are not of sufficient general interest to print in full in the *Customs Bulletin*, but are abstracted to assist Customs officials in easily locating cases and tracing in-

he United States rnational Trade

stracts

Protest Decisions

DEPARTMENT OF THE TREASURY, February 23, 1984.

ed States Court of International Trade at New York are
ers of the Customs and others concerned. Although the
nt in full, the summary herein given will be of assistance
ng important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESS
				Item No. an
P84/22	Carman, J. February 16, 1984	C.J. Tower & Sons of Buf- falo, Inc.	81-10-01475	Item 256.90 7.7%
P84/23	Maletz, J. February 23, 1984	Fleetwood	81-3-00304	Item 274.70 4%
P84/24	Maletz, J. February 23, 1984	Unicover Corp.	81-3-00302	Item 274.70 4% or 25% valorem, depending the countr origin
P84/25	Maletz, J. February 23, 1984	Unicover Corp.	81-3-00309	Item 274.70 4%
P84/26	Maletz, J. February 23, 1984	Unicover Corp.	81-3-00310	Item 274.70 4% or 3.94 25% ad va depending the date o entry and country of

ASSESSED No. and Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
256.90 %	Item 256.80 4.7% Item 806.20 subject to duty only upon the value of the repairs or alterations	Agreed statement of facts.	Detroit American goods returned; Absorbent paper rolls
274.70	Item 274.75 6 cents per pound or 5 cents per pound, depending on the date of entry	Unicover Corporation United States v.	Denver, Co. Paper Products
274.70 or 25% ad valorem, depending on the country of origin	Item 274.75 6 cents or 5 cents per pound or 30 cents per pound, depending upon the date of entry and the country of origin	Unicover Corporation United States (Slip Op. 83- 24) v.	Denver, Co. Paper Products
274.70	Item 274.75 6 cents per pound	Unicover Corporation United States (Slip Op. 83- 24) v.	Denver, Co. Paper Products
274.70 or 3.9% or % ad valorem depending on the date or country and country of origin	Item 274.75 6 cents or 5 cents per pound or 30 cents per pound, depending upon the date of entry and the country of origin	Unicover Corporation United States (Slip Op. 83- 24) v.	Denver, Co. Paper Products

P84/27	Maletz, J. February 23, 1984	Unicover Corp.	81-7-00908	Item 274.70 3.9% or 3.8% 25%, ad valorem, depending on the date of ex and country of origin
P84/28	Maletz, J. February 23, 1984	Unicover Corp.	82-1-0048	Item 274.70 3.9% or 3.8% valorem depending on the date of ex
P84/29	Rao, J. February 27, 1984	Lou Taylor, Inc.	77-8-01460	Item 656.25 25% for 1979 and earlier, 23.1% for 1980 21.3% for 1981 19.4% for 1982 17.5% for 1983
P84/30	Carman, J. February 27, 1984	Coleco Industries, Inc.	82-3-00305	Item 680.12 5.5%
P84/31	Carman, J. February 27, 1984	Tre Pol, Inc.	79-11-01675	Item 200.91
P84/32	Carman, J. February 27, 1984	Tropicana Products, Inc.	82-1-00075	Item 165.36 35 cents per gallon

1.70 or 3.8% ad m, ding on ate of entry ountry of	Item 274.75 5 cents or 4.5 cents per pound or 30 cents per pound depending upon the date of entry and country of origin	Unicover Corporation v. United States (Slip Op. 88- 24)	Denver, Co. Paper Products
1.70 or 3.8% ad m, ding on ate of entry	Item 275.75 5 cents or 4.5 cents per pound, depending upon the date of entry	Unicover Corporation v. United States (Slip Op. 88- 24)	Denver, Co. Paper Products
3.25 or 1979 arlier, for 1980, for 1981, for 1982, for 1983	Item 745.68 Duty Refund Formula (Duty rate for 656.25- duty rate for 746.68) \times (0.43 \times \$value)	Agreed statement of facts	Miami, Florida Clasps
0.12	Item 800.00 Duty free	Agreed statement of facts	New York Steel molds
0.91	Item A200.91 Duty free under the Generalized System of Preferences	Agreed statement of facts	El Paso, Texas Wood and Paper
6.36 ts per	Duty Refund Formula (35 cents \times NEG C \times 7) - (20 cents \times NEG C \times 4.6271) / 3	Agreed statement of facts	Tampa, Florida Concentrated Orange juice

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and R
P84/33	Maletz, J. February 27, 1984	Unicover Corporation	81-3-00306	Item 274.70 4% or 3% or 25%, depend- ing on the date of entry and country of ori-
P84/34	Maletz, J. February 27, 1984	Unicover Corporation	81-3-00307	Item 274.70 4%
P84/35	Maletz, J. February 27, 1984	Unicover Corporation	82-7-00947	Item 274.70 3.9%, 3.9%, 3.7% or 25%, depending on the date of en- try and country of origin
P84/36	Boe, J. February 28, 1984	Cal Custom/Hawk	81-11-01534	Item 716.18 67 cents each Item 720.34 12.7%
P84/37	Maletz, J. February 29, 1984	Unicover Corporation	81-3-00305	Item 274.70 4% or 25% depending on the country of origin

ESSED . and Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
.70 3% or depending date of and y of origin	Item 274.75 6 cents or 5 cents per pound, depending upon the date of entry and country of origin	Unicover Corporation v. United States (Slip Op. 83- 24)	Denver, Co. Paper Products
.70	Item 274.75 6 cents per pound	Unicover Corporation v. United States (Slip Op. 83- 24)	Denver, Co. Paper Products
.70 3.9%, or 25%, depending on date of entry and country of origin	Item 274.75 5 cents, 4.5 cents or 3.4 cents per pound or 30 cents per pound, depending upon the date of entry and the country of origin	Unicover Corporation v. United States (Slip Op. 83- 24)	Denver, Co. Paper Products
.18 ts each 20.34	Item 688.36 5.3 percent ad valorem	United States v. Texas Instruments Appeal No. 81-23 (1982)	Los Angeles, Calif. Integrated Circuits
.70 25% depending on country of origin	Item 274.75 6 cents per pound or 30 cents per pound, depending upon the country of origin	Unicover Corporation v. United States (Slip Op. 83- 24)	Denver, Co. Paper Products

Decisions of the Court of Interna-

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Abstracted Reappr

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/49	Re, C.J. February 16, 1984	Metasco, Inc.	74-4-00862	Export value
R84/50	Re, C.J. February 16, 1984	Nichemen Co., Inc.	75-7-01806	Export value

the United States International Trade

Abstracts

Appraisement Decisions

OF TION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCANDISE
	Appraised values shown on entry papers, less addi- tions to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
	Appraised values shown on entry papers, less addi- tions to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Los Angeles Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/51	Carman, J. February 16, 1984	Aurora Products Corp.	79-8-01301	Constructed value
R84/52	Re, C.J. February 17, 1984	Starlight Trading, Inc.	80-4-00711	Export value
R84/53	Carman, J. February 17, 1984	Mitsubishi International Corporation	83-2-00301	American selling price
R84/54	Watson, J. February 22, 1984	The Akron	R59/3950-18339	Export value
R84/55	Watson, J. February 22, 1984	Bruce Duncan Co., Inc., a/c Lloyd Trade Co.	R61/3031 etc.	Export value
R84/56	Watson, J. February 22, 1984	Bruce Duncan Co., Inc., a/c Lloyd Trade Co.	R61/15953 etc.	Export value
R84/57	Watson, J. February 22, 1984	Hearever Co., Inc.	R60/2156 etc.	Export value

OF TION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	Appraised values as determined by Customs, less the additions in the amounts of 20% of the cost of American supplied components under Item 807.00 TSUS, 25% of the cost of tools, molds and other assists furnished and supplied by the American importer, and less 30% of the cost of transporting the American components	Agreed statement of facts	New York Not stated
	Appraised values shown on entry papers, less additions to reflect currency revaluation	Agreed statement of facts	New York Not stated
elling	Appraised values less 23%, per pair	Agreed statement of facts	New York Footwear
e	F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Binoculars
e	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Transistor radios
e	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Transistor radios & accessories
e	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Francisco, Calif. Transistor radios & accessories

R84/58	Watson, J. February 22, 1984	Majestic Electronics, Inc.	R65/16979- 40553	Export value
R84/59	Watson, J. February 22, 1984	Mission Furniture Mfg. Co.	R61/11846- 28773	Export value
R84/60	Watson, J. February 22, 1984	The Ruby Importing Co.	R59/381- 17475	Export value
R84/61	Watson, J. February 22, 1984	Southern Precision Instrument Co.	R60/3694- 2873	Export value
R84/62	Watson, J. February 22, 1984	Southern Precision Instrument Co.	291490-A- 653	Export value
R84/63	Watson, J. February 22, 1984	Southern Precision Instrument Co.	R61/10056	Export value
R84/64	Watson, J. February 22, 1984	Southern Precision Instrument Co.	R60/11443	Export value
R84/65	Watson, J. February 22, 1984	United China & Glass Co.	R63/1589- 770	Export value
R84/66	Watson, J. February 22, 1984	John L. Westland & Son, Inc., a/c Manhattan Novelty Corp.	R59/2633- 18567	Export value

Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Transistor radios & accessories
F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Transistor radios & accessories
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. 7x35 MM2CF Opera glasses
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Dallas, Texas Binoculars
F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	San Antonio, Texas Binoculars
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Binoculars
F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	San Antonio, Texas Binoculars, Field glasses
Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Diego, Calif. Dinnerware— Porcelainware
F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Binoculars

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/67	Watson, J. February 22, 1984	John L. Westland & Son, Inc., a/c Manhattan Novelty Corp.	R59/15858 etc.	Export value
R84/68	Watson, J. February 23, 1984	A. E. Lyon Company	R65/23555- 42960	Export value
R84/69	Watson, J. February 23, 1984	E. J. & R. Gindi	R64/7587- 3674	Export value
R84/70	Watson, J. February 23, 1984	Martel Electronics Sales	R66/2879- 43449	Export value
R84/71	Watson, J. February 23, 1984	Monarch International, Inc.	R65/16693- 41926	Export value
R84/72	Watson, J. February 23, 1984	United China & Glass Co.	R65/15550- 6495-A	Export value
R84/73	Watson, J. February 24, 1984	Hearever Co., Inc.	R60/21106, etc.	Export value
R84/74	Watson, J. February 24, 1984	The Mellinger Co.	R60/1545, etc.	Export value

SIS OF UATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Transistor radios & accessories
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Pipe fittings
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Earthware
value	F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Transistor radios and accessories
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Transistor radios and accessories
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Flatware
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Transistor radios and accessories
value	F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit invoice prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Transistor radios & accessories

				Export value
R84/75	Watson, J. February 24, 1984	Southern Precision Instrument Co.	R60/1813, etc.	
R84/76	Watson, J. February 24, 1984	Southern Precision Instrument Co.	R60/11446, etc.	Export value
R84/77	Watson, J. February 24, 1984	Southern Precision Instrument Co.	R61/5073, etc.	Export value
R84/78	Watson, J. February 24, 1984	Tradewinds Imports, Inc.	R62/5918- 28475	Export value
R84/79	Watson, J. February 27, 1984	Tradewinds Imports, Inc.	R61/5475, etc.	Export value
R84/80	Carman, J. February 27, 1984	Chori America, Inc.	82-8-01089	Export value
R84/81	Re, C.J. February 28, 1984	Nichimen Co., Inc.	76-10-02332	Export value
R84/82	Re, C.J. February 29, 1984	Lenco Photo Products, Inc.	73-8-02450	Export value

value	F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit prices and the appraised values	Agreed statement of facts	Los Angeles, Calif. Transistor radios and accessories
value	Appraised unit values 7.5% thereof, net packed	Agreed statement of facts	San Antonio, Texas Transistor radios and accessories
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Transistor radios and accessories
value	F.o.b. unit invoice prices plus 20 percent of the difference between the f.o.b. unit prices and the appraised values	Agreed statement of facts	San Francisco, Calif. Transistor radios and accessories
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Francisco, Calif. Transistor radios and accessories
value	Value calculated in accordance with C.I.E. 38/81 of Oct. 18, 1981, and C.I.E. 30/81 of July 20, 1981	Agreed statement of facts	New York Polyester fabrics and/or yarns
alue	Appraised values shown on the entry papers less those additions which were included in said appraised values to reflect currency revaluation	Agreed statement of facts	New York Not stated
alue	Appraised values shown on the entry papers less those additions which were included in said appraised values to reflect currency revaluation	Agreed statement of facts	New York Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/83	Re, C.J. February 29, 1984	Nichimen Co., Inc.	75-8-02024	Export value
R84/84	Re, C.J. February 29, 1984	Metasco, Inc.	76-1-0083	Export value
R84/85	Watson, J. February 29, 1984	S.H. Kress & Company, Inc.	R59/10708, etc.	Export value
R84/86	Watson, J. February 29, 1984	S.H. Kress & Company, Inc.	R60/21169, etc.	Export value

SIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
value	Appraised values shown on the entry papers less those additions which were included in said appraised values to reflect currency revaluation	Agreed statement of facts	New York Not stated
value	Appraised values shown on the entry papers less those additions which were included in said appraised values to reflect currency revaluation	Agreed statement of facts	New York Not stated
value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles, Calif. Radio cases, earphones, earphone cases and batteries
value	Export values, those radios described on Schedule A, are the f.o.b. unit prices plus 20 percent of the difference between the f.o.b. unit prices and the appraised values, and those radios described on Schedule B, the appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Francisco, Calif. All transistor radios

Decision of the U.S. Court of Appeals for the Federal Circuit

APPEAL No. 84-726—Bethlehem Steel Corp., et al. v. United States—COUNTERVAILING DUTY INVESTIGATIONS—CERTAIN STEEL PRODUCTS—TARIFF ACT OF 1930, AS AMENDED—Appeal from Slip Op. 83-104, filed December 12, 1983, dismissed on appellant's motion for withdrawal of its petition for permission to appeal, February 8, 1984, issued as a mandate February 21, 1984.

Appeals to the U.S. Court of Appeals for the Federal Circuit

APPEAL No. 84-839—Frederick Wholesale Corporation v. United States—28 USC 1581(a)—LIQUIDATION—Appeal from Slip Op. 83-134, filed on February 14, 1984.

APPEAL No. 84-852—United States v. Keith W. Atkinson, and St. Paul Fire & Marine Insurance Company—Appeal from Slip Op. 83-121, and on the order of February 13, 1984, which denied the extension of time for filing of an appeal. Filed in USCIT on February 17, 1984.

APPEAL No. 84-856—Roquette Freres and Roquette Corporation v. United States—CRYSTALLINE AND LIQUID SORBITOL FROM FRANCE—Appeal from Slip Op. 83-137, filed on February 21, 1984.

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